

Zbiegien Jr., Michael J.

From: Wallace, David H.
Sent: Saturday, January 30, 2010 3:15 PM
To: 'Mace, Damond R.'
Cc: mjgarvin@hahnlaw.com; Zbiegien Jr., Michael J.
Subject: RE: American Greetings v. Cookie Jar: Deposition scheduling

Damond-

I tried unsuccessfully to reach you by phone this a.m. I wanted to discuss the deposition scheduling issues with you one-on-one, rather than continue sending competing e-mails, so that we could attempt to work together to meet our respective needs.

With the foregoing in mind, I will not use this e-mail to point out the various and significant disagreements I have with many of the assertions and misstatements in your e-mail. If you and I can't work this out, I will save those for Judge Gwin.

Here is where I understand we are:

You want Wiley and Melchior. While I do not believe it is incumbent upon Cookie Jar to produce outside directors for deposition, I have told you I will endeavor to make that happen, and I meant what I said. This is the first time, however, you have taken the position that you need them by February 18. Given the current deposition schedule and the schedules of the witnesses and counsel, that may be difficult, but I will look into it. If it can't be done, we may need to agree to some slight modification of the expert report schedule. I am amenable to that, at least in concept. Also, let me know whether you can commit to completing both in a single day, as that might facilitate scheduling.

You now also want a 30(b)(6) depo, and you want that by February 18 as well. Your e-mail represents your very first indication that you would like such a deposition. Please send a formal list of the topics you would like to cover, so that I can begin to identify the appropriate designee(s) and to determine their availability. It seems to me, however, that it is ambitious to believe that this deposition can also be completed by February 18. After all, the three depositions you now say you need prior to February 18 will take place in Canada, there is associated travel and preparation time for each witness, and we are already committed to a deposition in New York next week (which will be two days unless you and I can reach an agreement respecting the division of time) and MoonScoop's 30(b)(6) deposition of Josef on the 10th (which could also spill over to the 11th). Also, I am already traveling and unavailable February 12-15.

Your e-mail also indicates for the first time that you would like to depose Michael Hirsh. I understand from your e-mail you do not need to depose him prior to the expert report deadline. We will obviously make him available at some point in the future after we get through what we both need for the expert report deadline.

As you know, we want to start with Zev Weiss. I need dates on which he will be available, and like you, I need dates before the expert report deadline. I have asked many times, but I have yet to receive any indication whatsoever as to his availability.

4/14/2010



We will also be issuing a revised 30(b)(6) shortly. I am currently targeting the week after you serve your expert report for that deposition. Based on our prior conversations, I understand Josef will be the likely witness. Please look into his availability during that time frame.

We will also likely be deposing Jeff Dunn sometime in the future. Given your request that I produce two Cookie Jar outside directors, I trust you will make him available.

Damond, in addition to the foregoing, there are many other party and non-party depositions to be completed, and if we do not both work together on scheduling, it will never get done. So, I will follow up on your requests, and I ask you to follow up on mine. I suggest we speak Tuesday or Wednesday at the latest to work on a schedule. During that call, we need to discuss the deposition needs of BOTH of our clients. Obviously, we will also need to involve Mike Garvin.

Thanks.

Dave

From: Mace, Damond R. [mailto:DMace@ssd.com]
Sent: Friday, January 29, 2010 6:53 PM
To: Wallace, David H.
Subject: American Greetings v. Cookie Jar: Deposition scheduling

David:

I am disappointed by your position, and by Cookie Jar's continued attempts to delay the needed depositions in this case. The bottom line is that I need the depositions of Mr. Wiley and Ms. Melchoir at least a week before the expert report date of February 25, so I need them by February 18. I have been asking for them since December 18, and it is now January 29. Their entities combined own approximately 90% of Cookie Jar, and they were both intimately involved in the facts and decisions at the heart of the claims and defenses in the current lawsuits--as confirmed by Mr. McCaw's deposition last week, and the hundreds of documents involving them that have been produced. I anticipate rather short depositions, and I am willing to go to Toronto to take them, as I did for Mr. McCaw. Further, I have previously provided you a copy of Judge Oliver's order, where your client, Cookie Jar, successfully argued that a demand to the party was sufficient to compel the deposition of an outside director.

Please let me know by noon Tuesday if the two Cookie Jar board members and majority owners that I have requested will give me dates (including dates before February 19) that they are available for deposition, or I will need to raise this with the Court so that your delay in providing dates does not further prejudice American Greetings.

4/14/2010

Based on the information that Mr. McCaw could not provide last week, the other deposition that I need before the expert report date is a 30 b 6 depo of Cookie Jar on what Cookie Jar believed the fair market value of the Strawberry Shortcake and Care Bears properties was from June 2008 to date, and CJ's financial modeling related to the properties.

We also need dates that Mr. Hirsh is available for deposition, but I do not need his deposition before the expert report date.

As for your statement below, the depo you said you wanted was a 30 b 6 deposition of American Greetings, for which I told you in December Mr. Mandlebaum is the designee, and I have provided you six or more dates that he has been available for deposition, but after I provided dates you sent me an email saying that you changed your mind, and would rather read more documents before you take that deposition. That was your choice, not mine.

As for Mr. Weiss, you only recently asked for dates of availability, and I am following up to obtain same. I see no reason that you need this depo before the expert report date, but if you think you do then please let me know. The July request you reference below is entirely out of context. You did not make that request. As a misguided strategic move, Cookie's New York lawyer unilaterally sent out a plethora of depo notices in the New York lawsuit (evidently as window dressing to argue that discovery was underway in New York for the arguments on the forum motions)--even though discovery had already been stayed in that matter before the notices were even sent. They were also sent without ever contacting opposing counsel first, as most local rules and rules of professionalism require. Nobody (including Cookie Jar) has ever taken those seriously, or followed up on any of those notices in any way.

As for your comment speculating about some future request you may or may not make for a deposition of one or more of American Greetings' outside directors, I have not seen their names on a single document involved in this case, nor can I even imagine any proper basis to notice such a deposition. Harassment is not a proper use of discovery. We will deal with that situation when it arises. If there is a proper ground to take such a deposition, of course we will promptly cooperate in trying to arrange same for you.

In short, I am hopeful that Cookie Jar will decide to cooperate on the depositions we need before the expert report date, so that we do not need to bother the Judge again with these deposition issues. Please let me know if Cookie Jar will.

Best regards, Damond

Damond R. Mace | Squire, Sanders & Dempsey L.L.P.

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From: Wallace, David H. [mailto:dwallace@taftlaw.com]
Sent: Wednesday, January 27, 2010 6:54 PM
To: Mace, Damond R.
Subject: RE: American Greetings v. Cookie Jar: Board member depositions [TAFT-CLEVELAND.FID1115642]

Damond-

I am disappointed that you would take the position set forth below with respect to deposition scheduling. As you well know, I did not request dates for American Greetings "Board Member" Zev Weiss, I requested dates for Zev Weiss, who is American Greetings' CEO as well as an inside director, and there can be no dispute that I am entitled to his deposition.

Cookie Jar first requested Mr. Weiss's deposition on July 21, 2009, long before you requested dates for Joe Wiley and Lisa Melchior. I have already produced our CFO for deposition at your request. As I have said to you before, discovery is a two way street, and it is now my turn to take Mr. Weiss's deposition.

Furthermore, as you and your Firm argued in the 2008 case, many Courts recognize a clear distinction between the obligation of a corporate party to produce inside directors for deposition, and the obligation of a corporate party to produce outside directors for deposition. Mr. Weiss, in addition to being the CEO, is clearly an inside director. Mr. Wiley and Ms. Melchior are outside directors, and are not officers of Cookie Jar. Moreover, to my knowledge, Mr. Wiley and Ms. Melchior are not U.S. citizens.

Having said all that and in the spirit of compromise, Cookie Jar will prevail upon Mr. Wiley and Ms. Melchior will make themselves available to be deposed voluntarily provided you first supply me with a mutually satisfactory date for Mr. Weiss's deposition. Please get back to me with dates, and I will get to work on my end accommodating your request. Also, I assume that you will be equally accommodating when Cookie Jar seeks to depose certain outside directors of American Greetings. If not, please advise immediately.

Thanks.

Dave

Taft /

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4/14/2010

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From: Mace, Damond R. [mailto:DMace@ssd.com]
Sent: Wednesday, January 27, 2010 11:59 AM
To: Wallace, David H.
Subject: American Greetings v. Cookie jar: Board member depositions

Dave:

I am in receipt of your request for some dates that American Greetings' Board member Zev Weiss can be available for deposition. As you know, since December 18 I have made repeated requests for dates for depositions of Cookie Jar's Board members Joe Wiley and Lisa Melchoir, but you have refused to make them available. You are also aware of how often during Mr. McCaw's deposition he referred to decisions made by Mr. Wiley and Ms. Melchoir which go to the heart of the claims and defenses in the lawsuit.

Please let me know if you are now willing to give me some available dates and produce Mr. Wiley and Ms. Melchoir for deposition, or if we need to have the Court resolve this issue. Once we get Mr. Wiley and Ms. Melchoir scheduled, I am sure that we will not have a problem coming up with an acceptable date for Mr. Weiss. Thank you.

Best regards, Damond

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